

Internal Revenue Service
memorandum

CC:TL

Br4:RBWeinstock

date: **14 SEP 1987**

to: District Counsel, Dallas

from: Director, Tax Litigation Division CC:TL

subject: [REDACTED]

This is in response to your memorandum of July 8, 1987, seeking technical advice with respect to the I.R.C. § 7428 declaratory judgment action brought by the [REDACTED].

ISSUE

Whether an I.R.C. § 501(c)(3) religious organization whose primary activities involve religious broadcasting and publishing, but which nonetheless fulfills an associational role, qualifies as a church, and therefore, an organization that is not a private foundation under I.R.C. §§ 509(a)(1) and 170(b)(1)(A)(i).

CONCLUSION

While the administrative record in some respects supports the adverse ruling issued to [REDACTED] concluding that it is not a church, in light of the Service's recent loss in Foundation of Human Understanding v. Commissioner, 88 T.C. No. 75 (1987), we recommend that you should concede this case.

DISCUSSION

[REDACTED] is an evangelical Protestant religious organization whose activities primarily involve religious broadcasting and publishing. Its radio program provides religious messages with an emphasis on evangelizing to persons of [REDACTED] background. The staff includes [REDACTED] ministers who prepare the radio program and literature which the organization distributes. The organization conducts weekly bible classes which are open to the public and these classes also incorporate a worship service. The average attendance at these classes is about [REDACTED] persons. [REDACTED] also supports some [REDACTED] missionaries in various cities and countries. [REDACTED]'s [REDACTED] ministers received their training at Bible schools and they conduct counselling, both locally and by correspondence in addition to the preparation of the radio broadcasts and publications. Contributions represented [REDACTED]% to [REDACTED]% of gross receipts and broadcasting expenditures were [REDACTED]% to [REDACTED]% of total expenses. Membership in [REDACTED] apparently does not require

08297

renunciation of other church affiliations and in fact [REDACTED] of [REDACTED]'s ministers attend Sunday services at different local churches in the [REDACTED] area. A [REDACTED] court has held that [REDACTED] is a church in a case involving unemployment tax withholding.

[REDACTED]

In Foundation of Human Understanding, the Tax Court found that an organization whose principal activity consisted of a religious broadcasting and publishing service constituted a church. Foundation of Human Understanding (FHU) was founded by Roy Masters in 1961 to spread his doctrine concerning meditation, emotional self-control and man's relation to God. In addition to its substantial broadcast and publishing activities, FHU conducted religious services several times weekly in Los Angeles, California and Grants Pass, Oregon with attendance ranging from 50 to 350. The services were conducted by ordained ministers of FHU whom had served a required personal tutelage under FHU's founder. FHU also operated a school at which religious instruction based on its beliefs is provided along with general educational instruction. Upon relocating its headquarters from Los Angeles to Grants Pass, FHU encouraged its members to relocate and about 2000 did so. While FHU did not require its members to disaffiliate with other churches, many of FHU's members viewed FHU as their only church.

FHU was recognized initially as a religious and educational organization, and had requested a ruling that it was not a private foundation under section 509(a)(1) because it was a church within the meaning of section 170(b)(1)(A)(i). After the Service issued an adverse ruling with respect to this request, it filed a declaratory judgment action under section 7428 with the Tax Court.

In a fully reviewed opinion, the Tax Court found that FHU was a church. Noting that the term "church" was not defined in section 170 or the regulations, the Court noted that at a minimum a church includes a body of communicants that assembles regularly to worship. The court considered the 14 criteria used by the Service in making determinations as to whether a religious organization is a church, and while finding them helpful, refused to adopt them as a test.

Examining FHU, the Court found sufficient associational characteristics present to conclude it was a church. FHU possessed a recognized creed and form of worship; it provided regular religious services in the form of meetings of regular congregations at established places of worship which were open to the public; FHU's services were conducted by ordained ministers; religious instruction was provided at the school FHU operates; and the organization had a distinct, if relatively short, religious history. The Court noted that not all of the 14

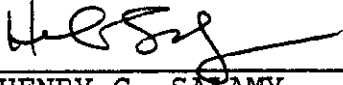
criteria were satisfied and called this a close case, but felt that FHU possessed most of the characteristics which were of central importance. With respect to Respondent's contention that the organization's primary activities were its substantial broadcasting and publishing activities, the Court agreed that these constituted a large portion of its expenditures, but that FHU possessed associational aspects that were far more than incidental.

The Service is not appealing Foundation of Human Understanding, and will be acquiescing in result only. While the associational aspects underlying the Tax Court's holding are not as pronounced with respect to [REDACTED], we do not believe that [REDACTED] is a good litigating vehicle for the issue of church status. We note that while its predominant activities are broadcasting and publishing, such activities are, like those of FHU, exclusively religious and tied to spreading [REDACTED]'s religious beliefs. [REDACTED] receives contributions in roughly the same proportion as FHU. Similarly, it expends roughly the same proportion of its total expenditures on broadcasting and publishing activities as FHU. Some factors are less favorable, such as that only [REDACTED] persons attend the weekly bible class/prayer services and there is no indication that members consider [REDACTED] to be their only church. Still, we believe the Tax Court could find [REDACTED]'s associational aspects to be more than incidental. We note that a state court has found [REDACTED] to be a church. This state court opinion does not bind the Service or the Tax Court and its legal analysis is different from that used by the Tax Court. However, assuming that the Tax Court sustained the Service's position, we might risk an appellate court accepting the somewhat more liberal legal standard applied by the state court. [REDACTED]'s petition was filed before the Foundation of Human Understanding opinion was issued by the Tax Court. Thus, the Service did not have the opportunity to consider it in examining [REDACTED]'s request for church classification at the administrative level. Therefore, we recommend that you concede this case.

We have coordinated our recommendation with the Exempt Organizations Technical Division in the National Office, and they agree that this case be conceded. If you have any questions, please contact Ronald B. Weinstock at FTS 566-3345. We are returning the duplicate legal file (including the administrative record) which you had forwarded to us.

ROBERT P. RUWE
Director

By:


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